

## Message Text

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PAGE 01 SANA 01267 01 OF 02 311002Z  
ACTION COM-04

INFO OCT-01 NEA-10 ISO-00 EB-08 /023 W  
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R 301300Z MAR 77  
FM AMEMBASSY SANA  
TO SECSTATE WASHDC 841  
INFO AMEMBASSY ABU DHABI  
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AMEMBASSY DAMASCUS  
AMEMBASSY DOHA  
AMEMBASSY JIDDA  
AMEMBASSY KUWAIT  
AMEMBASSY MANAMA  
AMEMBASSY MUSCAT  
AMEMBASSY RABAT  
AMEMBASSY TEHRAN  
AMEMBASSY TEL AVIV  
AMEMBASSY TRIPOLI  
AMEMBASSY TUNIS  
AMCONSUL ALEXANDRIA  
AMEMBASSY BEIRUT  
AMCONSUL CASABLANCA  
AMCONSUL DHAHRAN  
AMCONSUL JERUSALEM  
AMCONSUL ORAN  
AMCONSUL TANGIER

UNCLAS SECTION 1 OF 2 SANA 1267

E.O. 11652: N/A  
TAGS: BENC, BGEN, XF, XI  
SUBJECT: CONTRACTING RULES, PRACTICES AND BARGAINING TECHNIQUES

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REFERENCE: 76 STATE A5955

1. PRICE: THE GOVERNMENT PREFERS AND USUALLY INSISTS  
ON FIXED PRICE BIDS. EXCALATION CLAUSES SHOULD NOT BE  
INCLUDED IN BID. ESCALATION CLAUSES AND/OR COST PLUS  
FEE CONTRACTS WILL BE TAKEN ON A CASE BY CASE BASIS,  
WITH NO SET POLICY AMONG THE VARIOUS MINISTRIES.

AFTER A SUCCESSFUL BID, THE CONTRACTOR CAN NEGOTIATE ESCALATION CLAUSES AND DEMURRAGE PROVISIONS WITH THE APPROPRIATE AUTHORITY. IN THE CASE OF A PROJECT BEING FUNDED BY AN OUTSIDE ORGANIZATION, SUCH AS ONE OF THE ARAB FUNDS, THE CONTRACTOR WILL NEGOTIATE WITH THE FUNDER. WITH REGARD TO INTERNAL GOVERNMENT FINANCING, THE CONTRACTOR WILL NEGOTIATE WITH THE COXOHERNED MINISTRY. WE KNOW OF TWO CASES IN WHICH ESCALATION OR DEMURRAGE CLAUSES WERE NEGOTIATED AFTER THE START OF A PROJECT. IN ONE CASE A CONTRACTOR APPEALED FOR REIMBURSEMENT OF UNEXPECTED COSTS NOT WRITTEN INTO THE CONTRACT SUCH AS INFLATION, LABOR DELAYS AND DEMURRAGE. HE WAS GRANTED THE ADDITIONAL FUNDING. ANOTHER CASE, WHICH IS PRESENTLY BEING STUDIED IN THE PRIME MINISTER'S OFFICE, INVOLVING SIMILAR CIRCUMSTANCES. THIS IS EXPECTED TO BE SETTLED IN FAVOR OF THE CONTRACTOR. IN REGARD TO SUPPLY CON-

TRACTS, PRICE ESCALATION CLAUSES WOULD ALSO HAVE TO BE NEGOTIATED. PRIVATE AND PUBLIC SECTORS FOLLOW THE SAME PRACTICES.

2. BID AND PERFORMANCE BONDS: BID AND PERFORMANCE BOND REQUIREMENTS ARE NOT UNIFORM AMONG NULL CONTRACTING AGENCIES OF THE GOVERNMENT. AS A GENERAL RULE, THERE ARE NO BOND REQUIREMENTS. HOWEVER, WE HAVE RECENTLY RECEIVED A TENDER FROM THE MINISTRY OF EDUCATION IN WHICH THERE IS A 5 PERCENT BID BOND INCLUDED. THIS BOND WILL BE REIMBURSED IN CASE OF UNCLASSIFIED

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UNSUCCESSFUL BID. UNCONDITIONAL BANK GUARANTEES ARE REQUIRED OF FOREIGN TENDERERS. WE HAVE BEEN UNABLE TO GET AN ANSWER REGARDING BID REDUCTIONS.

3. FORCE MAJEURE: FORCE MAJEURE IS NOT DEFINED IN TENDER CONDITIONS. AS IN PARAGRAPH 1, ANY CONDITIONS FALLING INTO THE CATEGORY OF FORCE MAJEURE WOULD BE SUBJECT TO NEGOTIATION.

4. TRAINING: IT IS CUSTOMARY FOR THE CONTRACTOR TO PROVIDE TRAINING FOR LOCAL PERSONNEL. THIS CAN BE ACCOMPLISHED ON THE JOB OR AT THE CONTRACTOR'S PLANT. IN THE LATTER CASE, THE GOVERNMENT WILL USUALLY PAY THE COST OF TRAVEL TO AND FROM THE CONTRACTOR'S PLANT AND LIVING EXPENSES WHILE THERE FOR ENGINEERS, TECHNICIANS AND ADMINISTRATIVE PERSONNEL. THE SUPPLIER IS EXPECTED TO PAY THE ACTUAL TRAINING COSTS. TRAINING EQUIPMENT CAN BE IMPORTED AND RE-EXPORTED DUTY FREE.

5. FOREIGN AND DOMESTIC WORKERS: THE CONTRACTOR IS EXPECTED TO EMPLOY AS MUCH LOCAL LABOR AS IS FEASIBLE FOR THE PROJECT. WHEN QUALIFIED, HE IS EXPECTED TO REPLACE FOREIGN PERSONNEL WITH DOMESTIC PERSONNEL. MOST LABOR IS SUPPLIED DOMESTICALLY. LOCAL LABOR IS VASTLY INEFFECTIVE COMPARED TO LABOR IN THE US. THERE IS, HOWEVER, AN ADEQUATE SUPPLY OF UNSKILLED LABOR IN THE YAR WITH A DRASTIC DECREASE IN NUMBERS AND CAPABILITY OF SEMI-SKILLED AND SKILLED LABOR. COMPANIES' EMPLOYEES WHO ARE BROUGHT INTO THE COUNTRY ARE NOT SUBJECT TO INCOME TAXES AND THEIR EFFECTS ARE EXEMPT FROM IMPORT DUTIES. SUITABLE HOUSING, FOOD AND CLOTHING ARE AVAILABLE LOCALLY, HOWEVER, AT COSTS VERY MUCH HIGHER THAN THOSE PREVAILING IN THE US. MEDICAL AND DENTAL CARE AND RECREATIONAL FACILITIES ARE LACKING.

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6. ARBITRATION: MACHINERY MAY BE USED FOR SETTLEMENT OF CONTRACT DISPUTES. USUALLY ARBITRATION PRACTICES INVOLVE THE TV DISPUTING PARTIES WITH THE EDIARY BEING A YEMENI. SHOULD THIS PROVE TO BE UNMANAGEABLE, INTERNATIONAL FORUMS ARE ACCEPTABLE. NO SPECIFIC INTERNATIONAL FORUM IS, AS YET, PREFERRED. HOWEVER, IT WOULD BE LIKELY, IN THE CASE OF FOREIGN FUNDING FOR THE CONTRACT, THAT THE FUNDING AUTHORITY WOULD BE THE ARBITER.

7. LOCAL AGENTS AND REPRESENTATIVES: LOCAL AGENTS AND REPRESENTATIVES ARE ALLOWED, BUT NOT REQUIRED. THEY CAN BE HELPFUL IN FOLLOWING A BID OR CONTRACT THROUGH THE MINISTRIES INVOLVED. IT SHOULD BE NOTED HERE THAT PRESENTLY THERE IS NOT AN ABUNDANCE OF INDIVIDUALS QUALIFIED TO BE OF INESTIMABLE VALUE. COMMISSIONS OR FEES WOULD BE NEGOTIATED WITH THE AGENT CANDIDATE.

8. LOCAL PARTNERSHIPS, CORPORATIONS: THERE ARE NO PROS AND CONS OF ESTABLISHING A LOCAL PARTNERSHIP OR CORPORATION. YAR LAW NUMBER 18 OF 1975 SPECIFIES THE FOLLOWING TYPES OF PROJECTS:

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ACTION COM-04

INFO OCT-01 NEA-10 ISO-00 EB-08 /023 W  
-----311010Z 087493 /11

R 301300Z MAR 77  
FM AMEMBASSY SANA  
TO SECSTATE WASHDC 842  
INFO AMEMBASSY ABU DHABI  
AMEMBASSY ALGIERS  
AMEMBASSY AMMAN  
USINT BAGHDAD  
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A. NATIONAL PROJECT - DOMESTIC CAPITAL SHARE OF THE  
PROJECT IS 90 PERCENT OR MORE.

B. MIXED OR JOINT PROJECT - FOREIGN CAPITAL SHARE IS  
MORE THAN 10 PERCENT BUT LESS THAN 90 PERCENT.

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C. FOREIGN PROJECT - FOREIGN CAPITAL SHARE IS 90  
PERCENT OR MORE. HILTON INTERNATIONAL HAS ENTERED A  
JOINT VENTURE WITH A LOCAL BUSINESSMAN TO CONSTRUCT A  
250 ROOM HOTEL.

9. GRADUATED OR ADVANCE PAYMENTS: 10 PERCENT OF THE

TOTAL CONTRACT PRICE IS NORMALLY PROVIDED FOR AT THE OUTSET OF THE CONTRACT. FUTURE PAYMENTS ARE PROVIDED FOR ON INSTALLMENT BASIS. 10-15 PERCENT OF THE TOTAL CONTRACT PRICE IS WITHHELD FOR SIX MONTHS AFTER COMPLETION OF THE PROJECT AS GUARANTEE THAT THE PROJECT HAS PROVEN SUCCESSFUL. PAYMENTS ARE MADE AGAINST BANK GUARANTEE.

10. LOCAL SUPPLY: THE GOVERNMENT PREFERS THE FOREIGN CONTRACTOR TO PROVIDE FOR SUPPLY. TO AVOID COSTS OF A LOCAL MIDDLEMAN. ESCALATION, FORCE MAJEURE, ETC. FOLLOW THE SAME RULES AS STATED IN PARAGRAPH 1.

11. BONDED AREAS: THE GOVERNMENT GIVES PRIORITY TO IMPORTS FOR A GIVEN PROJECT. THE LEVEL OF PRIORITY IS BASED ON THE WORTH OF THE CONTRACT AND ITS BENEFIT TO THE YAR. BONDED AREAS CANNOT BE GUARANTEED AT PRESENT, HOWEVER, ALL POSSIBLE EFFORTS ARE EXERTED TO EXPEDITE CUSTOMS CLEARANCE.

12. LANGUAGE AND UNITS OF MEASUREMENT: UNITS OF MEASUREMENT SHOULD BE IN THE METRIC SYSTEM. ENGLISH LANGUAGE IS ACCEPTABLE. AN ARABIC COPY OF ALL DOCUMENTS, ALTHOUGH NOT NECESSARY, WOULD BE QUITE EFFECTIVE.

13. CORPORATE TAXES: TO DATE, THE YARG HAS COLLECTED NO TAXES FROM FOREIGN CONTRACTORS. THIS IS NOT EXPECTED TO CHANGE.

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14. MACHINERY AND EQUIPMENT: THERE IS NO CUSTOMS DUTY LEVIED ON MACHINERY AND EQUIPMENT DIRECTLY RELATED TO A MAJOR PROJECT. USED MACHINERY AND EQUIPMENT NEED NOT BE RE-EXPORTED. THERE IS A LOCAL MARKET FOR SUCH MATERIAL: HOWEVER, ANY SALE OF MACHINERY OR EQUIPMENT MUST BE APPROVED BY THE MINISTRY OF ECONOMY IN ACCORDANCE WITH CUSTOMS REGULATIONS.

15. DUE TO THE FACT THAT THE YAR ECONOMY AND ATTENDANT DEVELOPMENT BOOM IS ONLY A FEW YEARS OLD, THERE ARE NO HARD AND FAST RULES REGARDING WHAT IS AND WHAT IS NOT NEGOTIABLE. IN DISCUSSIN WITH THE DEPUTY MINISTER OF ECONOMY, HE CONTINUALLY DEFERRED ANSWERS TO SPECIFIC QUESTIONS AS BEING SUBJECT TO A CASE BY CASE BASIS. THE YAR HAS NOT YET HAD SUFFICIENT CASES OF CONTRACT DISPUTES AND HARD, RECURRING POINTS OF NEGOTIATION TO HAVE FORMULATED A FAST SET OF RULES REGARDING CONTRACTING, PRACTICES AND BARGAINING TECHNIQUES. AS

MORE US FIRMS BID AND NEGOTIATE ON YAR PROJECTS, A  
CLEARER PICTURE SHOULD EMERGE FOR BOTH PARTIES.  
SCOTES

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## Message Attributes

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**Review Markings:**  
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